IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 13TH SEPTEMBER 2006 / 22ND BHADRA 1928

MFA.No. 1162 of 2000(D)

IC.18/1997 OF EMPLOYEES' INSURANCE COURT, PALAKKAD

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APPELLANT/APPLICANT:

P.N.SUBASH CHANDRAN,
HOTEL AMRUTHA,
EAST NADA,
GURUVAYOOR.

BY ADV. SRI.P.F.THOMAS
SRI.SUNIL THOMAS
SRI.JOJI SUNIL

RESPONDENT/OPPOSITE PARTY:

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A.No.1162 OF 2000

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Dated this the 13th day of September, 2006.

JUDGMENT

The appellant is the applicant in I.C.No.18/97 before the Employees' Insurance Court, Palakkad. He challenges the order dated 17th July, 2000 passed on an application filed by him under Section 75 of the Employees' State Insurance Act, 1948, hereinafter referred to as the "Act", for short.

2. On 23-7-1990, the Insurance Inspector conducted a preliminary inspection of the records of the applicant's hotel and recorded that 18 employees were employed from April, 1990, but the hotel was not covered under the Act since the Scheme was not extended to that area. On 20-2-1992, Insurance Inspectors conducted an inspection of the records of the applicant's hotel and recorded employment of eight permanent employees and six temporary employees. According to the Department, in the 01-Form submitted by the appellant-employer, he himself had admitted that

14 employees were working as on January, 1992. They also found that electric power was used for operating two grinders, fridge etc. in connection with the process. The Insurance Inspectors, therefore, recommended coverage of the hotel from 1-1-1992 onwards.

3. The ESI Corporation accordingly demanded compliance of the Act with effect from 1-1-1992 by issuing Ext.B4 Form C-11 dated 31-3-1992. That action was challenged by the appellant before this Court in O.P.No.6529/1992 which he instituted along with another contending particularly that hotels are not establishments under the Act. That argument was repelled by this Court relying on the judgment of this Court in the case of **G.L.Hotels Ltd. [(1993) 4 SCC 363]** and Ext.B5 judgment was issued by this Court on 2-8-1996 disposing of the said writ petition holding that the petitioners cannot contend that hotels and restaurants are not covered by the Act but leaving the petitioners with opportunity to approach the Employees' Insurance Court under Section 75 of the Act. The

petitioners then sought for three months' time before this Court to approach the appropriate authority and this Court accordingly, as per Ext.B5 judgment, deferred proceedings impugned therein for a period of three months.

4. Thereafter, the application under Section 75 of the Act was filed on 9-6-1997 before the Employees' Insurance Court. In that application, the appellant sought to challenge the decision covered by Ext.B4 dated 31-3-1992 regarding the period from 1-1-1992 to 31-10-1994, as also an order dated 14-5-1997 passed under Section 45A of the Act determining the amount payable for the period from 1-11-1994 to 31-3-1996.

5. The Employees' Insurance Court by the impugned order held that in so far as the period covered by Ext.B4 is concerned, the petitioner is concluded by Ext.B5 judgment of this Court in O.P.6529/1992 and he is disabled from challenging that any further since he did not move the Employees' Insurance Court within a period of three months from that judgment. It further

held that the action of the respondent taken as per Ext.A6 under Section 45A of the Act for the period from 1-11-1994 to 31-3-1996 has to go and calls for re-assessment. Thus, by the impugned order, in so far as the period from 1-11-1994 to 31-3-1996 is concerned, there has to be a resolution by the competent authority and in so far as the period from 1-1-1992 to 30-10-1994 is concerned, the petitioner is held to have been concluded by his failure to move the Employees' Insurance Court within three months from Ext.B5 judgment of this Court.

6. Assailing the findings of the Employees' Insurance Court, the learned senior counsel appearing for the appellant urged before me that Ext.B5 judgment cannot be read to tie down the appellant in the manner in which the Employees' Insurance Court has done in so far as the period from 1-1-1992 to 31-10-1994 is concerned. In so far as the finding of the Employees' Insurance Court that the appellant is liable to be covered under the Act is concerned, the learned senior counsel urged that the only material on the basis of

which such a finding has been entered into is Ext.B3 which contains a sheet of paper on which names of those persons who are stated to be the temporary employees are enlisted in English. A note underneath the list in Malayalam is to the effect that those persons are employed as temporary employees by the appellant. The said statement is part of Ext.B3 and is appended to it. It is signed by the appellant, admittedly. However, he urged before the Employees' Insurance Court through his rejoinder and in his testimony as AW1 that the same was only a blank paper got signed by the Insurance Inspector and that the other entries in the paper were written by the Inspector and that the same is a malice exercise. According to the learned senior counsel, the Employees' Insurance Court had come to the conclusion that the handwriting in which AW1 had written down the very same words in Malayalam before the Court was not in complete consonance with the manner in which the recitals are written in the disputed Ext.B3. So much so, it is urged that the finding of the Employees' Insurance Court that there was no reason for the Insurance Inspector to act in such a manner against the

interest of the appellant ought not to be countenanced. According to the appellant, the malice in the game is that the Insurance Inspector was bent upon saying that the appellant is roped into the purview of the Act. The learned senior counsel further contended that in so far as the period from 1-1-1992 to 31-10-1994 is concerned, the Employees' Insurance Court ought not to have held that the application is barred for not having been filed within a period of three months from Ext.B5 judgment. He also referred to Ext.A1 muster roll and Ext.A2 wage register which do not reflect payment of any amount or inclusion of any person in the muster roll in excess of nine which is well within the limits on which the appellant could stand outside the purview of the Act.

7. Per contra, the learned counsel for the Corporation urged that having obtained an order from this Court in the form of a direction in Ext.B5, the appellant ought to have moved the Employees' Insurance Court within three months therefrom, if he were to seek interference of the Employees' Insurance Court with

the demand for the period from 1-1-1992 to 31-10-1994. So much so, it is urged that Ext.B4 not having been challenged within that time frame, the same has become final and the order of the Employees' Insurance Court on that count cannot be faulted. The learned counsel for the Corporation supported the finding of the Employees' Insurance Court in so far as the coverage of the petitioner's hotel under the Act is concerned.

8. The last sheet of Ext.B3 which is the disputed document, admittedly, contains the signature of the appellant. According to him, he had given a signed blank paper to the Insurance Inspector. The identity of the person to whom the said paper has been entrusted is not in dispute. The Insurance Inspector is a public officer and he is an authority under the Act. There is no reason to assume that the appellant would have given a blank signed paper to the Insurance Inspector. There is also no room to assume that a blank paper was ever given. The writings in Malayalam in the disputed document have been re-written by the appellant in Court in a different paper. It is also appended to Ext.B3 by

the Employees' Insurance Court. I have also perused the said writing in comparison with what is contained in Ext.B3 as disputed writing. The signature appearing in the disputed document is the same signature that appears in almost all the other documents in the case file in which the appellant's signature appears. This has come out on a perusal of the entire records before the Court below. Under such circumstances and having regard to the fact that Ext.B3 is of February, 1992 and the examination of the appellant as AW1 was some time in January, 2000, I do not find any error in law in the inference of the Employees' Insurance Court that there are discernible dissimilarities between the disputed writing and the admitted writing, though apparently it may seem to be different.

9. That apart, the Employees' Insurance Court has, in my view, rightly come to the conclusion that no malice or malafides has been found on the Insurance Inspector and the appellant having given a signed blank paper cannot be believed. No personal grudge is

attributed to the Insurance Inspector regarding any personal malice against the appellant. The suggestion that the Insurance Inspector has insisted in ensuring that the appellant is brought under the Act, is only a different way of putting the true fact, namely, the Insurance Inspector is duty bound to ensure that persons who are bound to come under the Act shall be brought under the Act. These are essentially the duties and responsibilities as an Insurance Inspector. The appellant as AW1 has given a definite statement in cross examination that "

" So much so, all that is required is that the establishment should have 10 employees to bring under the Act. Having already found that Ext.B3 is a reliable document, the permanent persons enlisted in the last sheet of Ext.B3 have also been rightly added and the impugned order to the extent it holds that the appellant is covered by the Act cannot be found fault with.

10. In so far as Ext.B5 judgment is concerned, this Court had followed the law laid by the Apex Court

to hold that hotels and restaurants are coverable under the Act. That did not by itself mean that a particular hotel or restaurant is covered under the Act. That will depend upon the question whether the necessary ingredients for coverage are established. This Court noticed that the appellant has a remedy under Section 75 of the Act and held that he has at liberty to take recourse to that. The original petition was disposed of subject to that remedy. All that the appellant did before this Court was to seek for three months' time to approach the appropriate authorities. That was allowed and a direction was given to the authorities not to take action against the appellant pursuant to Exts.P2 and P3 for a period of three months. In my considered view, all that this Court was concerned at that point of time and had, in fact, directed was deferring of the proceedings against the appellant for a period of three months giving him an opportunity to move the Employees' Insurance Court. I am not inclined to read Ext.B5 as pinning down the appellant with an outer limit of three months from Ext.B5 judgment to move the Employees' Insurance Court under Section 75 of the Act even as

regards the period from 1-1-1992 to 31-10-1994. Not only that, Ext.B5 judgment was delivered on 2-8-1996. The application under Section 75 of the Act was filed on 9-6-1997. There is no reason to treat that the recovery of contribution for the period from 1-1-1992 to 31-10-1994 was not liable to be considered by the Employees' Insurance Court, that too, on a ground that it was barred for not having been challenged within time.

11. The foregoing discussions will show that the impugned order is vitiated on a substantial question of law in as much as Ext.B5 judgment of this Court has been wrongly interpreted by the Employees' Insurance Court and the consideration of contribution has been left undecided on the finding that the appellant was not entitled to agitate the said issue on account of an interpretation of Ext.B5 judgment.

In the aforesaid circumstances, while affirming the finding of the Employees' Insurance Court that the establishment had employed temporary employees enlisted

in the last page of Ext.B3, the question whether the establishment was liable to pay contribution at the rates as determined in Ext.B4 and Ext.A6 is left open to the opposite party to make a re-assessment of the contribution in respect of the period from 1-1-1992 to 31-3-1996 having regard to what is aforesaid. The appeal is allowed partly, to the above extent.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 13th September,2006.